

# Reclaimed Water Use Rule Advisory Committee

Department of Ecology Building

Lacey, WA

Meeting Notes for June 2 and 3, 2010

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## Attendees

### **RAC Members and Alternates**

Don Perry, Lakehaven Utility District  
Bill Peacock, City of Spokane  
Bruce Rawls, Spokane County  
Karla Fowler, LOTT Alliance  
Kristina Westbrook, King County  
Susan Kaufman-Una King County  
Dave Monthie, King County (phone June 3)  
Jessie Israel King County  
Doug Raines, Department of Corrections  
Donna Buxton, City of Olympia  
Walt Canter, WA Water and Sewer District Association  
Clint Perry, Evergreen Valley Utilities  
Allen deSteiguer, PNCWA

### **DOH**

Craig Riley, DOH / OSWP  
Denise Lahmann DOH

### **Ecology**

Kathleen Emmett  
Tim Gaffney  
Jim McCauley  
Katharine Cupps (phone)  
Bill Moore

### **Public**

Lincoln Loehr Stoel Rives

## **Introductions and Agenda – June 2**

The June 2, 2010 meeting convened at 9:15 a.m. and ended at 4:15 p.m. Introductions were made. A request was made that groundwater be discussed the first day of the meeting. John Stormon, a staff hydrogeologist who is presenting information regarding groundwater recharge can only attend the second day so the agenda was not changed.

## **Timeline presentation**

Bill Moore discussed the current time frame for the rule. The goal is to have the rule filed in December, 2010. The time frame may be adjusted if necessary. It is possible that the RAC may be asked to attend an additional meeting regarding changes made to the rule after the current comments are incorporated. He also discussed the possibility of sharing the economic analysis information with the RAC. The guidance document should be in draft form at the time of the CR 102 filing. RAC members indicated issues that need to be addressed are: water right impairment, timeline for rule adoption, how the rule will be implemented, and rule areas open for interpretation.

## **Report on Workshops**

More than 150 people attended three reclaimed water (RW) workshops presented by Ecology staff. The workshops were in Spokane Valley May 20<sup>th</sup>, Everett, May 25<sup>th</sup>, and Olympia, May 26<sup>th</sup>. The most frequently asked questions were about water rights impairment and mitigation (Sections 100 & 105), emerging contaminants (Sec 295), Class A water (Sec 320) conveyance of water (Sec 435), lead and non-lead agency designation (Sec 050), and ground water recharge (Sec 700).

## **Rule Topics Discussion**

**Section 050** Ecology staff thought that review and permitting details for LOSS projects or similar ones where lead agency designation may be ambiguous will best be served by placing the explanation in guidance.

**Section 090** The RAC commented on several definitions. Suggestions were made to delete the second sentence of the natural wetlands definition and questions arose about public entity and private utility, terms used in section 205. Ecology staff responded that they will continue to clarify and refine several definitions.

**Section 145** A couple of comments were made regarding private system capacity assessment at the workshops. These will be reviewed by Ecology and DOH to determine if language will be modified or if guidance will supplement the rule.

**Section 295 (8)** A brief discussion arose about emerging contaminants related to sufficient information for decision making and the potential for participation by out-of-state experts. A concern was expressed that what is now flexible language in the rule may become a “requirement” in the future. Others thought wastewater discharges should be addressed before reclaimed water monitoring is required. University of Washington studies on irrigated turf grass found the endocrine disruptors in the reclaimed water were not taken up by plants, or into food crops. The RW rule will be implemented by Ecology regional offices and DOH, but there is a reuse coordinating committee and peer review of permits to assure consistency state-wide for this issue. One suggestion was to move 295(8) to some other part of the rule, such as Part IV, Technical Standards.

**Section 295 (16 & 18)** Advice was given that some of the language in this section is vague. Ecology will review and improve the existing language. In some cases a facility may add new users without reopening the permit.

## **Water Rights Issues**

RAC members expressed concern that if an impairment/mitigation determination isn’t made prior to facility construction; it may be appealed post construction. RAC asked if any legislation regarding an early appealable water rights decision on RW is proposed. Ecology has no agency-request legislation proposed for RW. Ecology responded that they were working on having a mechanism to issue permits prior to construction (including impairment) and have it appealable at that time.

If the permit is issued before the facility is built, the conditions of the permit might say “upon completion of construction, (permit condition inserted) will be in place”. DOH indicated that the LOSS rule allows permitting prior to construction.

RAC requested the definition of impairment be placed in the guidance manual, not rule, particularly if water quality is included in a water rights definition. A concern is that the impairment definition (water quality) will apply to groundwater recharge projects. Ecology responded that it favors keeping the definition in rule as a basis for decision making and attempt to bring clarity to a sticky issue.

**Section 100** A few RAC members thought the exclusive right language goes too far. It requires the permittee to identify existing and proposed RW uses. What about relinquishment? What if the permittee wants to change the use, do they have to repeat the impairment process? Ecology staff responded that these concerns will be studied and addressed in the next draft of the rule.

**Section 105(b)(iii)** It was suggested to replace “life of the project” with “life of the permit”. Ecology staff agreed. In relation to a permitted facility, if there are no changes affecting

impairment during the life of a permit, additional impairment assessments would not be necessary.

**Section 105(b)(vi)** RAC noted that this states the “preliminary determination” may take 180 days to complete. There is no mention of a final determination time frame. Ecology responded that this issue will be studied further. Using a specific time line may take away flexibility. Ecology pointed out that anyone can appeal the permit, which includes an impairment analysis.

**Section 110** RAC stated water right mitigation is sometimes confused with impairment mitigation. Ecology responded that a permittee can use reclaimed water for mitigation, but in order to do that, you need another water right. So you must have a clause in the water right that addresses mitigation.

*(End of June 2 meeting)*

### **Introductions and Agenda – June 3**

The June 3, 2010 meeting convened at 8:15 a.m. and stopped at 12:15 p.m. Introductions were made. Additional attendees for June 3 included:

Heather Trim - People for Puget Sound  
Dave Nazy - Ecology Water Resources  
John Stormon - Ecology Southwest Regional Office  
Mr. Skillings – Skillings and Connolly consulting engineers

### **Rule Topics Discussion (continued)**

**Section 720** RAC stated meaning of 720 is unclear. It reads like anyone could seek a water right under this provision. Why can any other person apply? Do you have to apply for a water right to do storage? Ecology responded that storage is permissible under the water code. Also, someone else may withdraw water from the storage area. A certain volume in and volume out is not in play here, it isn't molecule for molecule.

RAC comment: What is the ASR time and distance for surface percolation? DOH responded that the 1997 standards indicated 2,000 ft for direct recharge projects. (NOTE: The March 17, 2010 version of the rule indicated 2,000 ft., and six months duration, but that provision was deleted from the draft rule version being reviewed on June 3.) Ecology stated that an ASR project does not guarantee that the water is there when you want to take it back out.

RAC indicated that ASR projects require a lot of work. For ASR projects, guidance may be helpful to clarify the process. Ecology agreed. In addition, we will tie 720 to 700 in the applicability subsection.

**Section 700(7)** RAC requested more detail regarding the point of compliance and the property line? No depth to an aquifer is listed in the rule. What about contaminants in the water leaving the property? Ecology responded that facilities have monitoring wells for down-gradient monitoring that could test for contaminants moving beyond the property line to other locations.

DOH also responded that there are 28 chemicals in the groundwater standards not covered by drinking water standards. Ecology stated that groundwater standards have been used in hundreds of permits for over 20 years. This standard is flexible and adapts to monitoring for chemicals of concern. RAC suggested that every project has unique situations so an OCPI clause should be added to the rule. Ecology noted that there is already a general exception to rule requirements written in and numerous specific waiver opportunities.

**Section 400** There was discussion as to whether certain sections of the rule in this part and the use parts were in addition to previous parts of the rule. Ecology will look at ways to clarify the language by adding “in addition, the following requirements apply.”

**Sections 600, 620, 640** RAC wanted to know how groundwater quality standards apply to wetlands. Ecology responded that RW is not exempt from 90.48 RCW. There is a misconception regarding the application of both drinking water standards and groundwater standards. Constituents from either standard may be used in permits. In addition, antidegradation applies to projects.

RAC requested certainty on what contaminant levels would be applied to a RW project, and a guarantee that they won’t change. One RAC member indicated that drinking water standards apply to surface percolation per 90.46.080. Ecology responded that the legislation passed in 2006 (ESHB 2884) gave the agencies the authority to apply different standards for surface percolation.

A RAC member questioned whether the low Nitrogen and Phosphorus standards for wetlands were achievable. Ecology responded that low nutrient levels were placed in the draft rule to protect the wetlands. These are the same standards that are in the 1997 Water Reuse and Reclamation Standards(WRRS). Ecology considers background water quality and there is the possibility of reduced water quality limits if a Net Environmental Benefit is realized.

RAC asked if liners are needed for all wetland ponds. Ecology responded that an unlined pond is satisfactory (WRRS) if you can demonstrate leakage won’t occur.

One RAC member asked if the new rule would increase costs. Ecology responded that there should not be any major increase in costs above the status quo. Personal care products and other chemicals may be an issue in the future, but we don’t know enough about them yet to predict cost risks.

**Section 160(5)** A RAC member expressed concern that the “site management plan” subsection may be too prescriptive and onerous to implement. It would be difficult to predict how this applies to facilities built ten years down the road. This would impact how contracts are written with other distributors and users of RW. Ecology staff stated the intent was to develop a typical overview plan. It may be possible to build a boilerplate for this purpose. The engineering report should demonstrate appropriate uses in the contract and outline what is enforceable. We have to have something in place for dealing with problem customers.

A RAC member asked how we could convert people from other sources to RW and make sure they do not lose their water rights. Ecology responded that if someone has rights to water in hydraulic continuity with the river, they should be able to keep them.